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SERVICE DATE – DECEMBER 14, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36252

NORTH CAROLINA & VIRGINIA RAILROAD COMPANY, LLC, CHESAPEAKE &
ALBEMARLE RAILROAD DIVISION—LEASE AMENDMENT AND OPERATION
EXEMPTION INCLUDING INTERCHANGE COMMITMENT—NORFOLK SOUTHERN
RAILWAY COMPANY

[REQUEST FOR WAIVER OF 49 C.F.R. § 1150.42(e)]

Digest:¹ This decision allows North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division, a Class III rail carrier, to enter into a superseding and replacement lease with Norfolk Southern Railway Company and operate approximately 77.07 miles of rail line in Virginia and North Carolina. This decision also waives the 60-day advance notice requirement because no employees would be adversely affected.

Decided: December 12, 2018

On November 20, 2018, North Carolina & Virginia Railroad Company, LLC (NCVA), Chesapeake & Albemarle Railroad Division (CA), a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. § 1150.41 to enter into a superseding and replacement lease with Norfolk Southern Railway Company (NSR) and to operate a rail line in Virginia and North Carolina.²

In its verified notice, CA certifies that NCVA's projected annual revenues, which include CA's revenues, as a result of this transaction would exceed \$5 million. Accordingly, unless waived, 49 C.F.R. § 1150.42(e) requires CA, at least 60 days before the notice of exemption can become effective, to send notice of the transaction to the national offices of the labor unions with employees on the affected lines, post a copy of the notice at the workplace of the employees on the affected lines, and certify to the Board that it has done so. However, the verified notice includes a request for waiver of those notice requirements. No opposition to this waiver request has been filed.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² CA is a division of NCVA.

BACKGROUND

CA filed a verified notice of exemption³ to enter into a new lease agreement (the New Lease) with NSR and continue to operate approximately 77.07 miles of rail line between (1) milepost NS 4.00 at Providence Junction, Va., and milepost NS 8.00 at Butts, Va.; (2) milepost NS 8.00 at Butts, Va., and milepost NS 73.59 at Edenton, N.C.; and (3) milepost WK 0.00 at Elizabeth City, N.C., and milepost WK 7.48 at Weeksville, N.C. (collectively, the Line). CA and NSR intend the New Lease to supersede and replace a prior lease from 1990 (the Original Lease), which was subsequently amended by the parties to, among other things, extend the term of the agreement.⁴

CA explains that the Original Lease, as amended, has expired, but CA has continued operating the Line on a month-to-month tenancy under the terms of the Original Lease until CA and NSR could negotiate a new lease agreement. CA and NSR intend the New Lease to supersede and replace the Original Lease and to allow CA to operate the Line for an additional 10 years. Because CA has been leasing and operating the Line and would continue to do so under the New Lease, CA requests a waiver so that the authority it seeks can become effective without providing the 60-day notice pursuant to § 1150.42(e). In support, CA argues that: (1) posting notices on the Line would not give any notice to NSR employees because no employees of the lessor, NSR, will be affected by the lease and none have worked on any part of the Line since 2003; and (2) compliance with the notice requirements would not further the purposes of the rule because CA will remain the operator of the Line, there will be no operational changes, and no CA employees will be affected by the New Lease.

DISCUSSION AND CONCLUSIONS

The purpose of the notice requirements at 49 C.F.R. § 1150.42(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation. The Board takes seriously the requirements of the rule, but it does not appear that the purpose behind the notice requirements would be thwarted if the requested waiver is granted in this case.

The record indicates that no employees would be adversely affected by a waiver of the requirements here. CA states that there will be no operational changes on the line as a result of the New Lease. CA employees would continue to provide the same service and maintenance they have provided since 1990, and NSR's (and its predecessor's) employees have performed no

³ Notice of the exemption was served on December 6, 2018, and published in the Federal Register on December 7, 2018 (83 Fed. Reg. 63,192). But for the 60-day labor notice requirement, the exemption would become effective December 20, 2018, 30 days after the verified notice was filed.

⁴ See Chesapeake & Albemarle R.R.—Lease, Acquis. & Operation Exemption—S. Ry., FD 31617 (ICC served Apr. 17, 1990). See also N.C. & Va. R.R., Chesapeake & Albemarle R.R.—Lease Amendment Exemption—Norfolk S. Ry., FD 35564 (Sub-No. 1) (STB served Dec. 16, 2011); N.C. & Va. R.R.—Lease & Operation Exemption—Norfolk S. Ry., FD 34272 (STB served Jan. 22, 2003).

work on any part of the Line since 2003. Because no employees would be adversely affected by waiver of the 60-day notice period, the Board will grant the waiver request, thereby allowing the exemption to lease and operate the Line to become effective on December 20, 2018.

This action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c).

It is ordered:

1. CA's request for waiver is granted, and the exemption to lease and operate the Line will be effective on December 20, 2018.
2. This decision is effective on its date of service.

By the Board, Board Members Begeman and Miller.